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Calendar No. 801

101ST CONGRESS *2d Session*	SENATE	REPORT 101-447

AIRLINE COMPETITION EQUITY ACT OF 1990

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2851

AUGUST 30, 1990.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, July 10), 1990

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Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2851]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2851) to alter the Federal rules applicable to commercial air carriers at high density traffic airports, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The bill repeals two rules governing operations at the four so-called "high-density airports" and proposes an interim airport slot allocation method for new entrants at these airports.

BACKGROUND AND NEEDS

The Federal Aviation Administration (FAA) within the Department of Transportation (DOT) has broad authority under the Federal Aviation Act of 1958 to regulate and control the use of the navigable airspace of the United States. In 1969, the FAA designated Kennedy, LaGuardia, and Washington National and O'Hare airports as high-density airports and prescribed a special air traffic rule to apply to operations (take-offs and landings) at those airports. This regulation, known as the "High Density Rule", established an hourly quota for each airport based on the capacity of 1969 for instrument operations—that is, operations when the

weather and conditions preclude visual flight rules. This rule was designed to address the problem of congestion at these airports; safety was not cited as justification for the rule's promulgation. Allocations of the airport slots among air carriers and air commuters were handled at each of the four airports by scheduling committees composed of incumbent carriers and interested new entrants and operating under a now-expired antitrust exemption.

The difficulties in reaching agreement among members of the airline scheduling committees and the resulting problems in slot allocation led to implementation of the so-called "Buy-Sell Rule" in 1985. This rule allocated slots to those air carriers and air commuters holding permanent slots which were in use on December 16, 1985, and declared that thereafter purchase, sale, trade or lease of these slots would be permitted. The rule explicitly states, however, that holding a slot does not confer any property right. Slots are under absolute FAA control.

Although the Buy-Sell Rule contains some "use or lose" provisions for slots, and sets up a lottery procedures for returned slots, new entrants have encountered difficulty obtaining slots to begin operations. Either slots are not for sale, or, if they are, the price is too high for a new entrant. Since the supply of slots is limited by the High Density Rule, the opportunity for any real expansion in operations does not exist.

There have been significant improvements in the air traffic control system since the High Density Rule was first imposed in 1969. Billions of dollars have been spent to modernize the system. As a result of the 1981 air traffic controller strike, the FAA instituted a method of metering traffic throughout the national system. This method, known as "Central Flow Control", configures traffic to accommodate the conditions in the enroute environment as well as at individual airports and adjusts the flow of traffic accordingly. Critics of the High Density Rule argue that artificial slot limits now are unnecessary because the FAA has the capability to determine capacity and will operate accordingly. In addition, the Government Accounting Office (GAO) has testified before the Aviation Subcommittee that not only are slot controls a barrier to entry at these airports, but also result in higher fares for the air traveler nationwide.

In 1986, the Committee unanimously reported legislation to repeal the Buy-Sell Rule; the Senate approved that bill by a vote of 82 to 14, but the legislation was not agreed to by the House. Once more, in 1988, the Committee reported legislation calling on DOT to re-examine the rule, but the Senate did not act on the bill. The Fiscal Year (FY) 1989 Department of Transportation Appropriations Act required DOT to consider changes in the slot allocation and transfer regulations but, to date, DOT has not complied.

Legislation is necessary to restore competition to these four airports. The High Density Rule created a shortage of slots available for new entrants by limiting slots. The Government failed to develop a slot distribution mechanism which was fair both to incumbents and to potential new entrants. The Buy-Sell Rule—an attempt to let market forces resolve the allocation process—clearly has not worked to promote competition.

Furthermore, the existence of the High Density Rule in the 1990s belies the effectiveness of the FAA's central flow control. Capacity at these four airports should be determined, as it is at other airports throughout the country, first by air traffic control capacity, and then by ground capacity, rather than by arbitrary slot numbers that have been frozen for years and are outdated.

Legislative History

On July 12, 1990, Senator McCain introduced the Airline Competition Equity Act of 1990, S. 2851, with Senators Ford, Danforth, Hollings, Exon, Kassebaum, and Kasten as cosponsors. The Aviation Subcommittee held a hearing on the legislation on July 18, 1990. The subcommittee heard testimony from DOT, the Air Transport Association of America, Midwest Express Airlines, Trump Shuttle, Pan American World Airways, and the Port Authority of New York and New Jersey.

On July 31, 1990, the Committee met in open session to consider the bill. An amendment in the nature of a substitute to S. 2851 was offered by Senator Ford, which included a provision regarding the distribution of unused new entrant slots for international service. The Committee then ordered S. 2851, as amended, reported by voice vote.

Summary of Major Provisions

As reported, S. 2851 repeals the Buy-Sell Rule as of July 12, 1990, thereby prohibiting the sale, lease or transfer of slots after that date. An exception is made for slot transfers which are part of an overall sale of an air carrier, or for slot transfers by an air carrier in bankruptcy which filed for bankruptcy prior to July 12, 1990. The bill also allows slot leases, which are in existence as of July 12, 1990, to be continued until 18 months after enactment of the legislation.

The Administrator of the FAA (Administrator) is required within 60 days to establish a pool of slots for new entrant carriers at each of the four high-density airports. These slots at each airport would be in addition to existing air carrier slots at such airport up to a maximum of 5 percent above current levels, would have use or lose provisions attached to them, and would be allocated to assure that no new entrant has more than 12 slots overall at such airport. If slots created for the new entrant pool are not used by new entrants, they may be used first to offer access to communities which lost subsidized air service under the essential air service program as a result of funding reductions pursuant to the FY 1990 appropriations for that program, and then for international service.

The bill abolishes the High Density Rule 18 months after enactment of the legislation. Thereafter, the Administrator would be required to certify in a report to Congress if the Administrator believes there is a need to limit operations at any airport in the interest of aviation safety. Any future limit on operations would be airport-specific. In accordance with the repeal of the High Density Rule, the bill also amends the Metropolitan Washington Airports Act of 1986, which limits operations at Washington National Airport to the levels contained in the High Density Rule. In addition,

the Secretary of Transportation (Secretary) is directed to study the shuttle service in the Northeast and to report to Congress on the results of the study within 12 months after enactment of the legislation, with such recommendations as are appropriate.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 9, 1990.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2851, the Airline Competition Equity Act of 1990, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, July 31, 1990.

S. 2851 would prohibit most purchases, sales and leases of slots at the four high density traffic airports (National Airport in Washington, D.C., O'Hare Airport in Chicago, and LaGuardia and Kennedy Airports in New York). The bill also would establish a pool of additional air carrier slots (not to exceed 5 percent of the existing slots) primarily for new entrant carriers at each high density traffic airport. In addition, S. 2851 would, 18 months after enactment, repeal the rules and regulations establishing the slots. S. 2851 also would require the Secretary of Transportation to study and determine the extent to which air shuttle service in the Northeast is of significant public interest.

Based on information from the Federal Aviation Administration (FAA), CBO estimates that enactment of S. 2851 would result in costs to the federal government of less than $200,000, primarily in fiscal year 1991, for rulemaking activities and for the mandated study. The initial increase in the number of slots could result in additional costs to the federal government for air traffic control to the exctent that air traffic and air traffic delays increase. Such costs could be greater after the slot system is abolished. The magnitude of these added costs would depend on the volume of additional air traffic and on the ability of the air traffic control system to handle the increased traffic. We would not expect these costs to exceed $1 million per year.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mitchell Rosenfeld and Marjorie Miller, who can be reached at 226-2860.

Sincerely,

Robert D. Reischauer,
Director.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

The bill covers the four designated high-density airports, and the commercial air carriers that serve those airports. It also covers the potential new carriers that seek to serve those airports.

ECONOMIC IMPACT

Abolishing the Buy-Sell Rule will have an immediate economic impact on the carriers holding slots at the high-density airports. These carriers will no longer be able to show the slots as an asset on corporate balance sheets and will not be able to profit by the sale of slots. New carriers will derive an economic advantage from the distribution of new entrant slots because it will provide access to airports previously closed to these carriers.

PRIVACY

This legislation will not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

The bill directs the Administrator to undertake rulemaking to establish a new entrant pool at the four high-density airports. In addition, a study of the shuttle operations in the northeast corridor is required from the Secretary. The paperwork resulting from the rulemaking and the study is not expected to pose a burden.

Section-by-Section Analysis

SECTION 1.—SHORT TITLE

Section 1 states the short title of the legislation, "The Airline Competition Equity Act of 1990".

SECTION 2.—FINDINGS

Section 2 contains Congressional findings that the Buy-Sell Rule, which allows public rights to be used as private assets, not only limits competition at the four high-density airports but also affects competition throughout the northeastern and midwestern United States. Ultimately this affects competition nationwide. The findings assert that passengers pay higher fees at slot-controlled airports and that increasing the number of slots will make it easier for carriers to establish operations at those airports. Additional findings point to improvements in the air traffic control system since the establishment of the High Density Rule in 1969, and state that the use of slots to control access at airports should be re-examined.

SECTION 3.—DEFINITIONS

Section 3 provides definitions for terms used in the bill.

SECTION 4.—PURCHASE, SALE, LEASE AND OTHER TRANSFER OF SLOTS

Section 4 repeals, effective July 12, 1990, that part of subpart S of part 93 of title 14, CFR, that codifies the so-called Buy-Sell Rule, except for: existing leases, which may be extended for 18 months following enactment of the bill; slot transfers as part of an overall transfer of ownership of an air carrier or substantially all assets related to a discrete operation of an air carrier; or slot transfers by an air carrier that filed for bankruptcy before July 12, 1990, and is receiving bankruptcy protection, if such transfer is needed to effectuate the sale of assets of that air carrier. The remainder of subpart S of part 93 of title 14, CFR, is unchanged.

This section also prohibits the Secretary or the Administrator from imposing any restrictions on aircraft operations at any high-density traffic airport unless such restriction is consistent with the bill.

Section 4 sets forth procedures and prohibitions pending complete elimination of slot restrictions (the High Density Rule) 18 months after enactment of the legislation. During this interim period, the Committee expects that slots will not be sold (or otherwise transferred for economic consideration) in a manner which separates the slots from the operating assets of the airline conducting operations with these slots.

However, this legislation is not intended to stand in the way of transactions involving entire airlines or substantial portions of airlines. In some cases, such transactions may be necessary in order to preserve the competitive presence of, or jobs historically provided in a market or region by, a particular airline. If an entire airline or all or a substantial portion of the assets of an entire airline are transferrred, and if some or all of its slots are part of that transaction and those slots are remaining with the assets (e.g., aircraft) associated with their use, then a prohibited transfer of slots under section 4 has not occurred.

SECTION 5.—ALLOCATIONS FOR NEW ENTRANT CARRIERS

Section 5 directs the Administrator to establish, by rule, a pool or air carrier slots for new entrant carriers at each high-density airport. These slots shall be in addition to existing air carrier slots, shall not increase the number of such existing slots by more than 5 percent, shall be spread evenly throughout the day, and shall be allocated so that new entrant carriers have an equal number of slots but not more than 12. These slots shall be public property within the control of the Administrator, and must be used within 60 days of an allocation or are to be withdrawn. The section further provides that if new entrant slots are not needed, the new entrant slots may be allocated by the FAA first to communities which lost air carrier service as a result of the reduction in funding for the essential air subsidies program in the FY 1990 Department of Transportation appropriations bill, and second to air carriers for use in international operations authorized after the date of enactment of the bill, except for operations covered under section 401(h) of the Federal Aviation Act of 1958. The section also repeals the provision in the Metropolitan Washington Airports Act of 1986, which re-

stricts the number of hourly operations at Washington National Airport to the levels in the High Density Rule.

The new entrant pool shall not be more than 5 percent in excess of the number of existing air carrier slots and cannot be taken from non-air carrier users. There may be situations at one or more of the airports where the new entrant pool would not be required because of the absence of new entrants; therefore, provision has been made to allow a number of communities that lost eligiblity for subsidized air service into one or more of these four airports as a result of funding in the FY 1989 Department of Transportation appropriations bill. These communities are Danville and Galesbury, IL; Bloomington and Muncie-Anderson-New Castle, IN; Clinton, IA; and New Bedford, MA. The section further provides that after new entrants and those communities have been covered, remaining slots, if any, may be used by air carriers to provide access for new international operations authorized after the date of enacement of the bill. The Committee does not intend, however, such use of slots for routes which one carrier may purchase from another.

SECTION 6.—HIGH-DENSITY TRAFFIC AIRPORT RULES

Section 6 repeals the High Density Rule 18 months after enactment of the bill, and provides that the Secretary or Administrator certify thereafter to Congress, after public notice and comment, if any rule, regulation, order, or other procedure is needed to limit slots at an airport. The justification for such rule must be aviation safety, and the report must demonstrate that there is no less anti-competitive method for assuring safety. Any such rule must be specific to one airport, unless the Administrator asserts that safety requires the inclusion of more than one airport.

The primary objective of the legislation is to increase airline competition at the four high-density airports by eliminating what GAO has called the single most important barrier to entry in the airline industry. If, as provided in this section, the Administrator reimposes slot limits on an airport, the Administrator must justify it to Congress, after notice and public comment as provided for in title 5 U.S.C., on the grounds of air safety. The Committee does not intend that the elimination of the High Density Rule disrupt existing bilateral agreements or the ability of carriers to provide international service.

It is possible that traffic may increase at the four airports as a result of enactment of this bill, and the Committee expects the FAA to begin airspace and airport improvements necessary to improve the levels of efficiency at which the airports will be able to accommodate the traffic. However, termination of the High Density Rule should not be conditioned on completion of improvements specified herein, and failure to complete such improvements by the termination date should not be viewed as a reason to postpone elimination of the rule.

Adequate FAA staffing levels are essential to safe and efficient operations at each of the four airports. There is concern about the adequacy of FAA staffing levels for controllers, maintenance technicians, aviation safety and security inspectors, and instrument approach procedures specialists at facilities serving these airports.

The FAA should exert significant effort and commit additional resources to the techniques used to train technical personnel assigned to these air traffic control facilities. Greater use should be made of computer-based instruction techniques and simulation. FAA is using these techniques on a limited basis, but needs to make a greater investment in new technology training applications.

In this regard, the failure rate for air traffiic control trainees at the FAA Academy has increased over the past year. This is particularly troublesome because progress has been slow in building up the number of Full Performance Level (FPL) controllers at the high-density related facilities. The FAA needs to find means to reduce the training failure rate and shorten the training cycle time.

Of the four airports, the FAA has given the most recent attention to Chicago O'Hare. As a result of congressional and industry interest in serious delay problems at O'Hare, the FAA has taken a number of steps which improved the situation significantly. The Committee supports those actions, and recommends that similar attention should be directed to resolving problems at the two New York airports, Kennedy and LaGuardia, where delays this year have increased dramatically from last year.

In this regard, the FAA should establish a plan with milestones to accomplish the recommendations of the Northeast Corridor System Safety and Efficiency Review as they relate to the New York area. A focal point for this project should be established at FAA headquarters to assure oversight of the process.

In addition, the FAA should accelerate key capital equipment projects which will have a direct impact on air traffic flow and capacity at the four high-density airports. These projects include upgrade of Instrument Landing Systems, installation of Sequenced Flashing Lights and Runway Visual Range Finders, and other technical improvements.

With respect to Washington National Airport, concern has been raised that the amendment made by this bill to the Washington Metropolitan Airports Act of 1986 will result in vastly increased operations and unsafe conditions at Washington National Airport. The levels of hourly operations prescribed by the High Density Rule, and referenced in that Act are already exceeded daily to accommodate extra shuttle sections, general aviation traffic and other operations—the slot numbers are not immutable. Furthermore, the FAA still has the responsibility for safe operation of the air traffic system and is not to abrogate this responsibility if the slot limits are lifted. If, as some argue, Washington National Airport is at capacity and can accommodate no additional operations, then the lifting of the rule should result in no increases in operations.

Section 6 also directs the Secretary to study the extent to which existing shuttle service in the northeast United States is of significant public interest, and to report the results, with any appropriate recommendations, within 12 months of enactment of this bill. This provision deals with a specific problem of a particular part of the Nation.

According to a 1989 report of the Census Bureau, one-sixth of the country's population—42.5 million people—live along the east coast between southern New Hampshire and northern Virginia. This area of mass concentration forms a single megalopolis of commerce and government, with its parts intertwined and interdependent. A unique internal air transport service is provided by two air carrier shuttles. Such service provides hourly flights for which no advance reservations are required and which offer guaranteed service with extra section flights. Such flights require, however, standby crew and standby aircraft, and a traffic control system which provides predictable takeoff and landing times. The significance of the shuttles is measured by their carriage of over 100 million passengers since 1961, and, in recent times, more than 4 million passengers each year.

Because of the uniqueness of the shuttle system, the Secretary is directed to study, and determine the public interest associated with the shuttle operations, and to report to Congress within 12 months on the results of such study. This report should contain such recommendations as the Secretary may decide are necessary to advance the findings of the study.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

Metropolitan Washington Airports Act of 1986

Section 6005 of that Act

SEC. 6005. LEASE OF METROPOLITAN WASHINGTON AIRPORTS.

(a) through (b) * * *

(c) MINIMUM TERMS AND CONDITIONS.—The Airports Authority shall agree, at a minimum, to the following conditions and requirements in the lease:

(1) through (4) * * *

(5) CONTINUATION OF REGULATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), all regulations of the Metropolitan Washington Airports (14 C.F.R. part 159) shall become regulations of the Airports Authority on the date the lease takes effects and shall remain in effect until modified or revoked by the Airports Authority in accordance with procedures of the Airports Authority.

(B) EXCEPTIONS.—The following regulations shall cease to be in effect on the date the lease takes effect:

(i) section 159.59(a) of title 14, Code of Federal Regulations (relating to new-technology aircraft); and

(ii) section 159.191 of title 14, Code of Federal Regulations (relating to violations of Federal Aviation Administration regulations as Federal misdemeanors).

(C) OPERATIONS.—The Airports Authority may not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on the date of the enactment of this Act, *except as provided in the Airline Competition Equity Act of 1990,* and may not impose a limitation after the date the lease takes effect on the number of passengers taking off or landing at Washington National Airport.

(6) through (11) * * *

(d) through (e) * * *

Section 6009 of that Act

SEC. 6009. RELATIONSHIP TO AND EFFECT OF OTHER LAWS.

(a) through (d) * * *

(e) OPERATION LIMITATIONS.—

(2) HIGH DENSITY RULE.—The Administrator may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on the date of the enactment of this title, *except as provided in the Airline Equity Competition Act of 1990,* and may not decrease the number of such takeoffs and landings except for reasons of safety.

(2) ANNUAL PASSENGER LIMITATIONS.—The Federal Aviation Administration air traffic regulation entitled "Modification of Allocation: Washington National Airport" (14 C.F.R. 93.124) shall cease to be in effect on the date of the enactment of this title.

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